

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF DETERMINING A FUTILE )  
CALL FOR THE DELIVERY OF SURFACE ) ORDER  
WATER IN WATER DISTRICT NO. 34, )  
BIG LOST RIVER )

The Director of the Department of Water Resources (Department), being charged with the duty of protecting vested water rights, enforcing certain statutes of the State of Idaho, and the rules of the Department, has consulted with the watermaster for Water District No. 34 and the advisory committee for Water District No. 34 regarding the determination of a futile call and delivery of surface water on the Big Lost River.

Based on the Department's investigation and understanding of the law, the Director finds as follows:

**FINDINGS**

1. Rule 20.04 (IDAPA 37.03.12.20.04) of the Rules Governing Water Distribution in Water District No. 34 (Distribution Rules), provides:

**Rule 37.03.12.020.04. Futile Call for the Delivery of Surface Water**

When curtailment of junior upstream surface water rights will not make water available for delivery and use to senior downstream surface water rights, without unreasonable waste as determined by the Director, the watermaster will not curtail the junior water rights in a futile effort to deliver water to the senior rights. The Director may consult the Water District 34 advisory board, the Big Lost River Irrigation District and other impacted water users when determining whether attempting to deliver senior downstream surface water rights would be futile.

2. Rule 30 (IDAPA 37.03.12.30.01 - .02) of the Distribution Rules, provides:

**Rule 37.03.12.030. Natural Flows**

Natural flow shall be delivered through the natural river channel to the point of diversion of record except as provided in these rules.

3. Rule 30.01 and 30.02 (IDAPA 37.03.12.30.01 - .02) of the Distribution Rules provide only two exceptions to Rule 30 above. The watermaster is allowed to deliver the natural flow of the river channel only through the Eastside Canal and the Munsey Ditch to downstream diversions under certain conditions.

4. The watermaster of Water District No. 34 has contacted the Director and provided measurements of the flow and diversions in the various reaches of the Big Lost River for those reaches defined in the Distribution Rules.
5. The watermaster reported on July 30, 2002, that no water was reaching the Moore Diversion on the Big Lost River near Moore, Idaho on that day. The Moore Diversion has the most senior priority rights in the lower end of the river valley. The watermaster also stated that approximately 1,000 inches of water (20 cfs) was reaching the diversions on July 29, 2002. He also reported that Mackay Reservoir was essentially empty and that storage releases had been reduced to about 50 cfs on July 30, 2002. He indicated that on July 30, there was about 116 cfs of water in the river flowing past the Beck Diversion, the last diversion in the area near Leslie, and that none of this water was reaching the Moore Diversion. There are no diversions of water from the river between the Beck and Moore Diversions. Thus, 100 percent of the water between Leslie and Moore was lost through natural channel loss and evaporation. The watermaster had already cut the priority of water rights on the Big Lost River on July 30, 2002, whereby only about 50 percent of the rights having a priority date of April 22, 1884, in the Mackay to Leslie reach were filled. The Department's water right accounting program also shows a priority cut of April 22, 1884, on July 30. The total combined rate of diversion for water rights in the Moore and Arco areas with priority dates of April 22, 1884, or earlier is only about 14.5 cfs. The earliest priority date for Big Lost River rights in the Mackay to Leslie reach is April 22, 1884. There is a total of about 30 cfs of water rights in the Mackay to Leslie reach with a priority date of April 22, 1884. The remaining portion of the April 22, 1884, rights, and hence all remaining rights in the Mackay to Leslie reach, would have to be cut to attempt delivery of the smaller quantity to senior rights at the Moore Diversion. Based on prior experience, the watermaster indicated that cutting all the remaining rights that are in priority in the Mackay to Leslie reach and delivering all remaining water to the Moore Diversion using the river channel would not provide beneficial use of water for rights on the Moore Canal because of significant losses in both the river channel and the Moore Canal.
6. The watermaster further reported on July 30, 2002, that he made an investigation of the river channel between Moore and Leslie between July 29 and July 30 to determine potential causes for the losses. The watermaster could not determine that the losses were caused by reasons other than natural channel seepage loss and evaporation resulting from drought conditions. The watermaster could not determine that the losses were due to any wasteful management or wasteful use of the water.
7. On July 30, 2002, the watermaster met with the advisory committee for Water District No. 34. All but one committee member was present. The advisory committee recommended that it was futile to try to deliver the most senior right at the Moore Diversion using the river channel but instead recommended that the watermaster try to deliver the most senior rights to the Moore Canal via diversion and conveyance to either the Burnett Ditch or the 3 In 1 Ditch. The headings of these ditches are located near Mackay and Leslie, respectively. The committee recommended use of these canals unless such delivery could not reach the Moore Diversion heading. The Department advised the watermaster to instruct the senior water right holders on the Moore Canal to file a Temporary Change Application with the

Department to change the point of diversion of the rights from the Moore Canal to the Burnett Ditch and to the 3 In 1 Ditch. Water District No. 34 prepared a Temporary Change Application and sought signatures for the application from the senior right holders on the Moore Canal.

8. On August 1, 2002, the Department received correspondence from the manager of the Big Lost Irrigation District. The correspondence indicated that the board of directors for the irrigation district had met to discuss river conditions and recognized that surface water was not deliverable to the Moore Diversion using the river channel. The board of directors, however, provided no specific recommendation concerning determination of a futile call.
9. On August 5, 2002, the watermaster and the manager for the Big Lost Irrigation District reported that all remaining storage water had been used from Mackay Reservoir as of about August 3, 2002. The watermaster also reported that since July 31, 2002, he had attempted to deliver water to the Moore Diversion heading using both the Burnett Ditch and the 3 in 1 Ditch. Water delivered through both ditches between July 31 and August 5, 2002, failed to reach the Moore heading. He further reported that river flows have continued to drop since July 30. The watermaster recommended on August 5, 2002, that the Director issue an order determining a futile call on the Big Lost River between Leslie and Moore.
10. Based on the information supplied by the watermaster for Water District No. 34, the documented river flows, and diversions and releases from Mackay Reservoir, the Director should determine a futile call for the delivery of surface water in the Big Lost River between Leslie and Moore.

**BASED UPON THE FOREGOING FINDINGS IT IS, THEREFORE, HEREBY ORDERED AS FOLLOWS:**

1. Based on the reported flows in the Big Lost River and based on the recommendation of the watermaster for Water District No. 34 on August 5, 2002, the curtailment of junior surface water rights upstream of the Moore Diversion for delivery and use of senior rights at the Moore Diversion constitutes a futile call by the senior water right holders at the Moore Diversion for the remainder of the 2002 irrigation season, except as provided in No. 3 below.
2. The watermaster for Water District No. 34 is hereby instructed to distribute surface flows of the Big Lost River in the reach from Mackay Dam to the Beck Diversion as a separate source for the remainder of the 2002 irrigation season, except as provided in No. 3 below.
3. The watermaster for Water District No. 34, with the approval of the Director, may discontinue the futile call determination anytime during the 2002 irrigation season if it is subsequently determined that delivery is no longer futile or if water becomes available to fill more than just the rights having priority dates of April 22 and April 30, 1884, in the Mackay to Leslie reach of the Big Lost River.

Dated this 16<sup>th</sup> day of August, 2002.

  
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KARL J. DREHER  
DIRECTOR